



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2004

Ms. Cathleen Parsley
General Counsel
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

OR2004-8274

Dear Ms. Parsley:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 210020.

The State of Office of Administrative Hearings ("SOAH") received a request for (1) information relating to license suspension cases heard on behalf of the Child Support Division of the Office of the Attorney General (the "OAG"), including names, addresses, license types, and hearing and decision dates; and (2) monthly hearing schedules or other documents beginning March 1, 2004 prepared by or for SOAH for the purpose of scheduling child support license suspension hearings, including names, OAG case numbers, SOAH docket numbers, and hearing and disposition dates. SOAH believes that the requested information is excepted from disclosure under section 552.101 of the Government Code. We also received arguments from the OAG and from the requestor.¹ We have considered all of the submitted arguments and have reviewed the submitted representative sample of requested information.²

¹See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

²This letter ruling assumes that the submitted information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes SOAH to withhold any information that is substantially different from the submitted information. We also note that you have redacted some of the submitted information that you seek to withhold from the requestor. Because we are able in this instance to discern the nature of the information at issue, we will determine whether it is excepted from public disclosure. In the future, you should refrain from redacting any information that you submit to this office in seeking an open records ruling. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that is made confidential by statute. SOAH raises section 552.101 in conjunction with section 231.108 of the Family Code. This section provides as follows:

(a) Except as provided by Subsection (c), all files and records of services provided under [chapter 231 of the Family Code], including information concerning a custodial parent, noncustodial parent, child, and an alleged or presumed father, are confidential.

(b) Except as provided by Subsection (c), all communication made by a recipient of financial assistance under Chapter 31, Human Resources Code, or an applicant for or recipient of services under this chapter are privileged.

(c) The Title IV-D agency may use or release information from the files and records, including information that results from a communication made by a recipient of financial assistance under Chapter 31, Human Resources Code, or by an applicant for or recipient of services under this chapter, for purposes directly connected with the administration of the child support, paternity determination, parent locator, or aid to families with dependent children programs. The Title IV-D agency may release information from the files and records to a consumer reporting agency in accordance with Section 231.114.

(d) The Title IV-D agency by rule may provide for the release of information to public officials.

(e) The Title IV-D agency may not release information on the physical location of a person if:

(1) a protective order has been entered with respect to the person; or

(2) there is reason to believe that the release of information may result in emotional or physical harm to the person.

(f) The Title IV-D agency, by rule, may provide for the release of information to persons for purposes not prohibited by federal law.

Fam. Code § 231.108; *see also* 42 U.S.C. § 654(26) (state plan for child and spousal support must have in effect safeguards, applicable to all information handled by State agency, that are designed to protect privacy rights of parties); Open Records Decision No. 417 at 4 (1984) (records relating to recipients of child support collection services are confidential).

The OAG is the legislatively-designated Title IV-D agency under chapter 231 of the Family Code. *See* Fam. Code § 231.001. The OAG explains that the suspension of licenses in Title IV-D cases is a federally-mandated IV-D enforcement function. *See* Fam. Code § 232.001 *et seq.*; *see also* 42 U.S.C. §§ 654(20) (to extent required by 42 U.S.C. § 666, state shall have in effect laws to improve child support enforcement effectiveness referred to in that section), 666(16) (addressing authority to withhold or suspend licenses).

Both SOAH and the OAG inform us that they are parties to an interagency contract, under which SOAH conducts administrative hearings in Title IV-D license suspension cases referred from the OAG's Child Support Division. *See* Fam. Code § 231.002(a)(4), (c) (Title IV-D may enter into contracts or agreements necessary to administer Fam. Code ch. 231). The OAG states that under the contract, information encompassed by section 231.108(a) of the Family Code is transferred to SOAH.³ The OAG asserts that information transferred to SOAH under the contract is confidential under federal and state law and remains so in SOAH's custody. The OAG also states that the release of such information to this requestor would not be for a purpose permitted by section 231.108 or federal law. *See id.* 231.108(c)-(f). The OAG argues that all of the information at issue must therefore be withheld from disclosure under section 552.101 of the Act. Based on the OAG's arguments and those of SOAH and our review of the information at issue, we conclude that all of the submitted information that is responsive to this request must be withheld from the requestor under section 552.101 in conjunction with section 231.108 of the Family Code.⁴

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

³We note that information may be transferred between governmental bodies that are subject to the Act without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision No. 661 at 3 (1999). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989). Thus, a transfer of information between state agencies is not a release of the information to the public for the purposes of section 552.007 of the Act, which prohibits the selective disclosure of information, or for those of section 552.352, which provides criminal penalties for the release of information that is considered to be confidential. *Id.*

⁴We note that Attachments K and L contain information that is not responsive to this request. Our conclusion under section 552.101 is applicable only to those portions of Attachments K and L that relate to cases referred to SOAH by the Child Support Division of the OAG. This decision does not address the public availability of any of the remaining information in Attachments K and L that is not responsive to this request, and SOAH need not release any of that information.

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

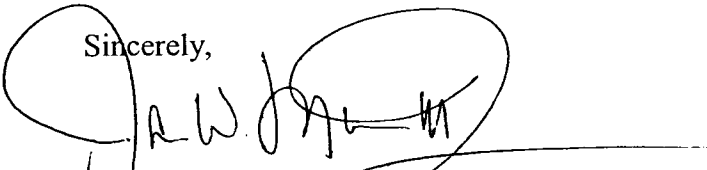
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 210020

Enc: Submitted documents

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